



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Edward H. Murphy
Downstream General Manager
American Petroleum Institute
1220 L Street, NW
Washington, DC 20005-4070

Re: Refiner and importer requirements for downstream oxygenate blending

Dear Mr. Murphy:

I am writing regarding the alternative method for refiners and importers to fulfill the quality assurance (QA) requirements for reformulated gasoline blendstock for oxygenate blending (RBOB), that was set forth in our December 3, 2003 letter (the alternative QA program). The December 3, 2003 letter limits use of the alternative QA program to reformulated gasoline (RFG) areas in New York and Connecticut. The American Petroleum Institute and the National Petrochemical and Refiners Association now have asked the United States Environmental Protection Agency (EPA) to exercise its enforcement discretion to allow use of the alternative QA program in all RFG areas nationwide.

As you know, 40 CFR §§ 80.69(a)(6) and (7) require refiners and importers of RBOB to meet certain quality assurance requirements that are intended to ensure RBOB is blended with the proper type and amount of oxygenate, in order that the RFG produced using the RBOB will achieve the environmental benefits intended for this fuel. EPA's December 3, 2003 letter gave refiners and importers another option for meeting these QA requirements. This alternative consists of a comprehensive program of QA sampling and testing that covers all terminals that blend ethanol with RBOB for use in the New York and Connecticut RFG areas, which is carried out by an independent association and paid for by an industry consortium.

We have concluded that the alternative QA program in New York and Connecticut has been as effective as the QA provisions in 40 C.F.R. §§ 80.69(a)(6) and (7). We also believe that the alternative QA program would be equally effective if used in other RFG areas, so that its expanded use would have no adverse environmental effects. For this reason, EPA is in the process of amending the RFG regulations to give all refiners and importers the choice of meeting the QA provisions in 40 CFR §§ 80.69(a)(6) and (7), or the alternative QA program.

Accordingly, subject to the conditions set forth below, and as a matter of enforcement discretion, refiners and importers may use the alternative QA program in any RFG area in lieu of meeting the requirements of §§ 80.69(a)(6) and (a)(7). Each alternative QA program must include the following elements:

The refiners and importers who produce RBOB for use in a particular RFG covered area must make arrangements for, and pay for, the conduct of a series of gasoline quality surveys to be conducted in the covered area by an independent survey association, following a survey plan that EPA has approved;

2. The independent association must meet the independence requirements set forth in 40 C.F.R. § 80.68(c)(13)(i);
3. Sampling and testing must be conducted in a manner consistent with the applicable provisions of 40 C.F.R. § 80.8 and 40 C.F.R. § 80.46;
4. The independent association must maintain all records relating to the QA requirements for a period of at least 5 years;
5. The independent association must immediately report to EPA any potential violations involving an oxygenate blender's failure to blend the designated volume of ethanol;
6. The independent association must immediately report to EPA any test result that shows less than 9 volume percent ethanol is present in any RFG sample taken from a retail outlet;
7. The independent association must immediately report to EPA any instance where a refiner, importer, terminal, distributor, carrier or retailer fails to cooperate in the manner described below; and
8. Each refiner and importer who supplies RBOB to the RFG area must take reasonable steps to ensure that each ethanol blender, distributor, carrier and retailer cooperates in this program. This cooperation includes the following:

Allow the collection of samples by the independent association;

Upon request, provide to the independent association copies of product transfer documents and other information regarding the source of any gasoline received, the destination of any gasoline distributed, the ethanol blending instructions for RBOB, and the concentration at which ethanol was blended; and

Include on all product transfer documents provided to distributors, carriers and retail outlets the identification of the terminal where the RBOB and ethanol were blended to produce RFG, and the ethanol blending rate specified for the RBOB.

Where the independent association reports to EPA any potential violation of the RFG regulations, EPA intends to take appropriate enforcement action. Such potential violations include, but are not limited to, failure of the oxygenate blender to add the proper amount of ethanol as specified by the product transfer documents. 40 C.F.R. § 80.69(b)(1).

This grant of enforcement discretion applies only to the requirements of 40 CFR §§ 80.69(a)(6) and (7), and does not alter any other requirement of 40 CFR § 80.69, including the quality assurance sampling and testing requirements applicable to oxygenate blenders under 40 C.F.R. § 80.69(b).

This exercise of enforcement discretion may be revoked or modified by EPA at any time in its sole discretion. In addition, this exercise of enforcement discretion terminates upon the effective date of any change to applicable regulations, or on December 31, 2005, whichever is earlier.

If you have questions, please call Mr. Erv Pickell of my staff at (303) 236-9506.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Skinner', with a stylized flourish at the end.

Thomas V. Skinner
Acting Assistant Administrator

Enclosure